

1 HONORABLE RICHARD A. JONES
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13 UNITED STATES DISTRICT COURT
14 WESTERN DISTRICT OF WASHINGTON
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DAVID MURESAN,

Plaintiff,

v.

WASHINGTON DEPARTMENT OF
SOCIAL AND HEALTH SERVICES –
ADULT PROTECTIVE SERVICES,

Defendant.

CASE NO. C07-1783RAJ
ORDER

I. INTRODUCTION

This matter comes before the court on Defendant's motion for summary judgment (Dkt. # 18). For the reasons stated below, the court GRANTS the motion and dismisses this action without prejudice.

II. BACKGROUND & DISCUSSION

Plaintiff David Muresan, proceeding in this action without an attorney, has named the Washington Department of Social and Health Services (“DSHS”) and specifically DSHS’s Adult Protective Services division as the sole Defendant in this action.

Mr. Muresan apparently operated an adult family home under a license from DSHS. In either 2003 or early 2004, DSHS found that Mr. Muresan neglected a vulnerable adult in his care. Mr. Muresan has challenged that finding repeatedly, first

1 before an administrative law judge in 2004, then before an administrative review judge,
2 then before the King County Superior Court, and finally before the Washington Court of
3 Appeals in 2006. Milstein Decl., Exs. 1-4. In each instance, DSHS's finding was upheld.

4 *Id.*

5 Mr. Muresan now brings his dispute to federal court, in the guise of a claim
6 against DSHS. Because Mr. Muresan is proceeding without an attorney, it is difficult to
7 discern what basis he has for federal jurisdiction, what his claims are, or how this court
8 can entertain a suit against DSHS when state courts have rejected Mr. Muresan's
9 challenges.

10 Mr. Muresan's complaint is clear enough however, to unambiguously state that
11 only DSHS is a Defendant. It is this fact that is fatal to his federal action.

12 The Eleventh Amendment prevents federal courts from entertaining suits by
13 individuals against a state. U.S. Const. amend. XI ("The Judicial power of the United
14 States shall not be construed to extend to any suit in law or equity, commenced or
15 prosecuted against one of the United States by Citizens of another State, or by Citizens or
16 Subjects of any Foreign State."). The Amendment's prohibition extends to federal suits
17 against state agencies. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100
18 (1984) ("It is clear, of course, that in the absence of consent a suit in which the State or
19 one of its agencies or departments is named as the defendant is proscribed by the
20 Eleventh Amendment."). Mr. Muresan has sued a state agency, and he has offered no
21 evidence or argument that any recognized exception to Eleventh Amendment immunity
22 applies here. Under these circumstances, the court must dismiss this action without
23 considering its merits. *Yakama Indian Nation v. State of Wash. Dep't of Revenue*, 176
24 F.3d 1241, 1245 (9th Cir. 1999) ("The Eleventh Amendment bars suits against a state or
25 its agencies, regardless of the relief sought, unless the state unequivocally consents to a
26 waiver of its immunity.").

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28 ORDER – 2

The court’s disposition of this action on Eleventh Amendment grounds makes it unnecessary to address DSHS’s alternate challenge that Mr. Muresan did not properly serve it with the summons and complaint.

III. CONCLUSION

For the reasons stated above, the court GRANTS Defendant's motion for summary judgment (Dkt. # 18). The court directs the clerk to enter judgment dismissing this action.

DATED this 5th day of August, 2008.


The Honorable Richard A. Jones
United States District Judge